SECTION 5.0

MITIGATION MEASURES

5.1 INTRODUCTION

The Council on Environmental Quality (CEQ) NEPA Regulations require that mitigation measures be developed for all of a proposal's effects on the environment where it is feasible to do so (CEQ 40 Most Asked Questions, 19a; 40 CFR Sections 1502.14(f) and 1502.16(h)). The NEPA Regulations define mitigation as:

> *avoiding the impact altogether by not taking a certain action or parts of an action, minimizing impacts by limiting the degree or magnitude of the action and its implementation, rectifying the impact by repairing, rehabilitating, or restoring the affected environment, reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, compensating for the impact by replacing or providing substitute resources or environments.* (40 CFR Section 1508.20).

These principles have been applied to guide design and siting of the project alternatives. Where potential effects on the environment were identified in early stages of project design and EIS preparation, appropriate changes in the project description were made to minimize or eliminate them. For example, under the Proposed Project alternative, an archaeological site will be avoided; eliminating structures within the 100-year floodplain will reduce flood hazards; and traffic has been routed to avoid impacts to local roadways. Other applications of mitigation, such as measures consistent with guidance issued in 1993 by CEQ to integrated "pollution prevention" principles, techniques, and mechanisms in NEPA planning, documents, and decisions, have been incorporated into the design of the alternatives and have been described throughout the EIS. In addition to the measures incorporated into the design of the alternatives, the following section provides mitigation measures to address specific effects identified in the preparation of the EIS. All mitigation is enforceable 1) because it is inherent to the project design, 2) under terms of the IGA (**Appendix B**), 3) under terms of the Agreement regarding Sales Tax between the Menominee Indian Tribe of Wisconsin, the Menominee Kenosha Gaming Authority and County of Kenosha (**Appendix R**), or 4) through provisions of Federal or State statute or City, County and Tribal Ordinance.

5.2 MITIGATION MEASURES

5.2.1 AGREEMENTS WITH THE CITY AND COUNTY OF KENOSHA

The Tribe has entered into the IGA with the City of Kenosha and a sales tax agreement with Kenosha County as a means of mitigating impacts of the proposed project. Specific mitigation provided for by these agreements is identified below.

INTER-GOVERNMENTAL AGREEMENT (IGA)

The Tribe has made the following commitments regarding employment practices, public services, health and safety, support of local government operations, charitable contributions, public purposes and a Responsible Gaming program:

Employment Practices

A. The Tribe will establish a preference index of 3 percent for Kenosha-area vendors bidding to provide goods and/or services to the facilities.

B. Best efforts will be used to grant 15 percent of all contracts to certified minority business enterprises, and 10 percent off all contracts to enterprises certified as at least 51 percent owned, operated and managed by women and Native Americans.

C. The Tribe will establish policies and procedures to assure at least 25% minority employment at the facilities, including an Indian Preference program.

Public Services

D. The Tribe will compensate the City for costs associated with upgrades to sanitary sewer and water mains as required to serve the proposed facilities.

E. The Tribe will pay any typical charges associated with stormwater control and management in the drainage basin of the project site as required by the City, or any stormwater utility having jurisdiction.

Payments to Schools and School Districts

F. Payments to the City will be distributed in part to the local school district, mitigating costs associated with enrollment increases associated with cumulative population growth.

G. Additional funds are provided for in the IGA to allow the County to make payments for schools located west of I-94.

Payments for Public Purposes

H. Revenues paid by the Tribe to the City of Kenosha will be used for following purposes:

1. To establish a trust fund to support the public museums of the City, the principal of which will be preserved and interest thereon used to defray expenses associated with the museums so as to facilitate the removal of the costs of such museums from the property tax levy.
2. To establish a trust fund to meet the needs of homeless persons in the City of Kenosha, the principal of which will be preserved and interest thereon used to fund such needs.
3. To address cultural and charitable needs in the County of Kenosha of organizations with a principal place of business in the County of Kenosha.

Responsible Gaming Program

I. The IGA provides for a Responsible Gaming program to mitigate for problems including and associated with gambling addiction in the Kenosha area. Please see the detailed discussion on the IGA in Section 2.0.

Adoption of Ordinances

J. The Tribe has agreed to adopt ordinances that are substantially similar to those of the City of Kenosha. All parties to the IGA must approve plans not consistent with the terms of the IGA. As such, taking the project site into trust and out of local jurisdiction would not alienate the City or County of Kenosha from any decisions to develop or construct on trust lands, in any manner unapproved by local jurisdictions.

SALES TAX AGREEMENT

The Sales Tax agreement will mitigate for costs associated with highway upgrade and maintenance associated with the proposed facilities. As discussed in Section 2.0, 30 percent of the tax collected at the proposed facilities will be paid to the County for 20 years, after which, the Tribe will pay the County 20 percent of sales taxes collected.

Funds acquired pursuant to this agreement are to be used for general highway purposes, specifically on road projects that benefit the Menominee Trust lands located in the County, and the citizens of the County. The County will prepare and maintain a list of road projects that it believes will benefit both the Menominee Tribal Trust lands and the citizens of Kenosha County, and will consult with the Tribe in the authoring of that list. The County will report to the Tribe annually on the uses of money paid by the Tribe to the County.

5.2.2 LAND RESOURCES

The following measures are recommended for Alternatives A, C, and D:

As required by the General Construction NPDES permit by USEPA under the CWA, a Storm Water Pollution Prevention Plan shall be prepared that will address water quality impacts associated with construction of the project. Water quality control measures identified in the Storm Water Pollution Prevention Plan shall include but not be limited to the following:

A. Existing vegetation shall be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction.

B. Temporary erosion control measures (such as silt fences, staked straw bales, and temporary revegetation) shall be employed for disturbed areas.

C. No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.

D. Sediment shall be retained onsite by a system of sediment basins, traps, or other appropriate measures.

E. A spill prevention and countermeasure plan shall be developed, if necessary, which will identify proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used onsite.

F. Store, handle, use, and dispose of petroleum products properly.

G. Store, cover, and isolate construction materials, including topsoil and chemicals, to prevent runoff losses and contamination of groundwater.

H. Establish fuel and vehicle maintenance areas away from all drainage courses and design these areas to control runoff.

I. Provide sanitary facilities for construction workers.

J. Provide disposal facilities for soil wastes, including excess asphalt produced during construction.

K. Educate all workers in the proper handling, use, cleanup, and disposal of all chemical materials used during construction activities.

L. The Tribe shall educate contractors involved in the project on the potential environmental damages resulting from soil erosion prior to development by conducting a pre-construction conference. Copies of the project's erosion control plan shall be distributed at this time. All construction bid packages, contracts, plans and specifications shall contain language that requires adherence to the plan.

M. Construction activities shall be scheduled to minimize land disturbance during peak runoff periods. Soil conservation practices shall be completed during the fall or late winter to reduce erosion during spring runoff.

N. Creating construction zones and grading only one part of a construction zone at a time shall minimize exposed areas. If possible, grading on a particular zone shall be delayed until protective cover is restored on the previously graded zone.

O. Utility installations shall be coordinated to limit the number of excavations.

P. Preserving as much natural cover, topography, and drainage as possible shall protect disturbed soils from rainfall during construction. Trees and shrubs shall not be removed unnecessarily.

Q. Disturbed areas shall be stabilized as promptly as possible, especially on long or steep slopes. Recommended plant materials and mulches shall be used to establish protective ground cover. Vegetation such as fast growing annual and perennial grasses shall be used to shield and bind the soil. Mulches and artificial binders shall be used until vegetation is established. Where truck traffic is frequent, gravel approaches shall be used to reduce soil compaction and limit the tracking of sediment off site.

R. Surface water runoff shall be controlled by directing flowing water away from critical areas and by reducing runoff velocity. Diversion structures such as terraces, dikes, and ditches shall collect and direct runoff water around vulnerable areas to prepared drainage outlets. Surface roughening, berms, check dams, hay bales, or similar devices shall be used to reduce runoff velocity and erosion.

S. Sediment shall be contained when conditions are too extreme for treatment by surface protection. Temporary sediment traps, filter fabric fences, inlet protectors, vegetative filters and buffers, or settling basins shall be used to detain runoff water long enough for sediment particles to settle out.

T. Topsoil removed during construction shall be carefully stored and treated as an important resource. Berms shall be placed around topsoil stockpiles to prevent runoff during storm events.

U. The disturbance of soils will be avoided and minimized as fully as possible.

Adoption of the above mitigation will reduce the impacts of construction on surface water to less than significant levels.

5.2.3 WATER RESOURCES

SURFACE WATER, DRAINAGE, AND FLOODING

The following measures are recommended for Alternatives A and D:

A. To reduce the project's potential to increase surface runoff, impervious surfaces will be minimized to the greatest extent feasible. Where feasible, all areas outside of buildings and roads will be kept as permeable surfaces, either as vegetation or high infiltration cover such as mulch, gravel, or turf block. Pedestrian pathways will use a permeable surface where possible, such as crushed aggregate or stone with sufficient permeable joints (areas between stone or brick if used). Rooftops will drain to vegetated driplines to maximize infiltration prior to concentrating runoff.

SURFACE WATER QUALITY

The following measures are recommended for Alternatives A, C, and D:

Construction Impacts

B. The Tribe shall comply with all provisions stated in the Clean Water Act (CWA). As required by the General Construction NPDES permit issued by the USEPA under the CWA, a Storm Water Pollution Prevention Plan shall be prepared that will address water quality impacts associated with construction of the project. Water quality control measures identified in the Storm Water Pollution Prevention Plan shall include Best Management Practices (BMP's) as previously described in **Section 5.2.1**.

The following measure is recommended for Alternatives A and D:

Operational Impacts

C. The incorporation of the new and modified detention basins in the stormwater management plan (Alternatives A and D) will detain the added runoff from the property due to the development of the project site. A detention basin would be constructed to compensate for increased impervious surfaces. The detention basin design will ensure that post-project runoff does not exceed 0.04 cfs/acre for a 2-year storm event or 0.30 cfs/acre for a 100-year storm event. Use of detention basins and structural and non-structural treatment BMPs will provide to the maximum extent possible, a reduction of total suspended solids to control operational storm water pollution and protect surface water quality.

The following mitigation is recommended for Alternatives A, B, C and D:

D. Fertilizer use will be limited to use the minimum amount necessary, taking into account any nutrient levels in the recycled water source. Fertilizer will not be applied during or immediately prior to a foreseeable rain event.

E. Landscape irrigation will be adjusted based on weather conditions and will be reduced or eliminated during the wet portion of the year in order to prevent excessive runoff.

Adoption of the above mitigation will reduce the operational impacts of the project on surface water to less than significant.

GROUND WATER QUALITY

The following measure is recommended for Alternative C:

F. The Tribe shall adopt water conservation measures to reduce the consumption of groundwater.

Adoption of the above mitigation will reduce the operational impacts of the project on groundwater to less than significant.

5.2.4 AIR QUALITY

The following measures are recommended for Alternatives A, C and D:

BMP – PROJECT CONSTRUCTION HEAVY-DUTY EQUIPMENT

A. The Tribe shall designate an on-site Air Quality Construction BMP Manager (AQCBM) who shall be responsible for directing compliance with BMP's for the project construction heavy-duty equipment.

B. To the extent that equipment and technology is available and cost-effective, the Tribe shall encourage contractors to use catalyst and filtration technologies such as a diesel oxidation catalyst (DOC), and retrofit existing engines in construction equipment. By adding these technologies to construction equipment, unburned fuel and oil would be oxidized to reduce overall emissions.

C. All diesel-fueled engines used in the construction of the project shall use low sulfur diesel fuel, which contains no more than 500-ppm sulfur or alternative fuels (i.e., reformulated fuels, emulsified fuels, compressed natural gas, or power with electrification). By using low sulfur fuels, significant reductions in sulfur oxide and particulate matter emissions would be achieved.

D. All construction diesel engines, which have a rating of 50 hp or more, shall meet, at a minimum, the Tier 2 Emission Standards for Nonroad Diesel Engines as specified in 40 CFR Parts 9, 86, and 89 unless certified by the on-site AQCBM that such engine is not available for a particular item of equipment. In the event a Tier 2 engine in not available for any off-road engine larger than 50 hp, that engine shall be a Tier 1 engine. In the event a Tier 1 engine is not available for any off-road engine larger than 50 hp, then that engine shall be a 1996 or newer engine. The AQCBM may grant relief from this requirement for that engine if compliance with this requirement is not feasible.

E. As to assist the AQCBM in identifying engines that comply with the above requirement over the period of project construction, all diesel-fueled engines used in the construction of the project shall have clearly visible tags issued by the AQCBM showing that the engine meets the above requirement.

F. Idling time shall be minimized to 5 minutes when construction equipment is not in use, unless per engine manufacturer's specifications or for safety reasons more time is required.

G. To the extent practicable, operation of heavy-duty equipment shall be managed to reduce emissions. Heavy-duty earthmoving, stationary and mobile equipment shall be maintained in optimum running conditions, which can result in 5 percent fewer emissions.

H. To the extent practicable, employ construction management techniques such as timing construction to occur outside the ozone season of May through October, or scheduling equipment use to limit unnecessary concurrent operation.

Implementing the above mitigation measures during construction activities would reduce construction-related emissions sufficiently to result in less-than-significant combined operational/construction VOC and NOx impacts, where such mitigation would be required for short-term impacts occurring during construction periods.

BMP – PROJECT CONSTRUCTION FUGITIVE DUST CONTROL

I. For any earth moving, conduct watering as necessary to prevent visible dust emissions from crossing property boundaries in any direction.

J. For all disturbed surface areas (except completed grading areas) apply dust suppression in a sufficient quantity and frequency to maintain a stabilized surface; any areas which

cannot be stabilized, as evidenced by wind-driven dust, must have an application of water at least twice per day to at least 80 percent of the unstabilized area.

K. For all disturbed surface areas that are completed grading areas:

   a. Apply chemical stabilizers within 5 working days of grading completion;

   b. Apply water to at least 80 percent of all inactive disturbed surface areas on a daily basis when there is evidence of wind-driven fugitive dust, excluding any areas which are inaccessible due to excessive slope or other safety conditions; or

   c. Establish a vegetative ground cover within 21 days after active operations have ceased (ground cover must be of sufficient density to expose less than 30 percent of unstabilized ground within 90 days of planting, and at all times thereafter).

L. For all inactive disturbed surface areas:

   a. Apply water to at least 80 percent of all inactive disturbed surface areas on a daily basis when there is evidence of wind-driven fugitive dust, excluding any areas which are inaccessible due to excessive slope or other safety conditions; or

   b. Apply dust suppressants in sufficient quantity and frequency to maintain a stabilized surface; and

   c. Establish a vegetative ground cover within 21 days after active operations have ceased (ground cover must be of sufficient density to expose less than 30 percent of unstabilized ground within 90 days of planting, and at all times thereafter); or utilize any combination of these control actions such that, in total, they apply to all inactive disturbed surface areas.

M. For all unpaved roads:

   a. Water all roads used for any vehicular traffic at least once per every two hours of active operations;

   b. Water all roads used for any vehicular traffic once daily and restrict vehicle speed to 15 mph; or

   c. Apply chemical stabilizer to all unpaved road surfaces in sufficient quantity and frequency to maintain a stabilized surface.

N. For all open storage piles:

   a. Apply chemical stabilizers;

   b. Apply water to at least 80 percent of the surface areas of all open storage piles on a daily basis when there is evidence of wind-driven fugitive dust; or

   c. Install a three-sided enclosure with walls with no more than 50 percent porosity that extend, at a minimum, to the top of the pile.

O. To provide track-out control:

   a. Pave or apply chemical stabilization at sufficient concentration and frequency to maintain a stabilized surface starting from the point of intersection with the public paved surface, and extending for a centerline distance of at least 100 feet and width of at least 20 feet; or

   b. Pave from the point of intersection with the public paved road surface for a centerline distance of at least 25 feet and a width of at least 20 feet, and install a track-out control device immediately adjacent to the paved surface, positioned so that exiting vehicles do not travel on any unpaved road surface after passing through the track-out control device.

P. During high wind conditions, when gusts exceed 25 mph, the AQCBM shall implement the following additional BMP's:

   a. For all earth moving activities, apply water to soil not more than 15 minutes prior to moving such soil;

   b. For all disturbed surface areas and unpaved roads, apply chemical stabilizers prior to a wind event;

   c. For all open storage piles, install temporary coverings; and

   d. For all off-site haul vehicles, cover loads.

By incorporating the BMP's for fugitive dust control as detailed above, fugitive dust emissions during all phases of project construction would be reduced to a less than significant level.

GENERAL CONFORMITY

Some reduction in projected annual NO_X emissions would occur from the use of mass transit (tour buses) for a portion of the visitor travel, and therefore bus transportation should be encouraged. The use of innovative transit approaches (employee car pooling, new low emitting construction equipment only, visitor mass transit) would reduce project annual emissions and meet conformity objectives. In addition, exclusive use of new (low emission) construction equipment would have a significant impact in reducing construction VOC and NO_X emissions. The current EIS analysis does not include use of any new construction equipment with respect to the emission factor, which is a conservative assumption.

The measures described above should reduce emissions to acceptable levels; however, if further reductions or mitigation is need for VOC or NOx to achieve General Conformity compliance, then one of the following two approaches could be implemented: 1) mitigation by acquisition of offset credits for VOC's and NOx, or 2) modify and resubmit the recently approved attainment plan to specifically include the incremental facility emissions (mobile and stationary) as authorized under NR 489.08(1).

5.2.5 BIOLOGICAL RESOURCES

The following measures are required for Alternatives A, C and D:

A. Removal of vegetation within the property shall be minimized to a feasible degree, and conducted between mid-September and early April, which is outside of the peak nesting period for most migratory bird species.

B. If vegetation removal is to be conducted during the nesting season, a qualified biologist shall conduct pre-construction surveys for active bird nests. If vegetation removal activities are delayed or suspended for more than one month after the pre-construction survey, the areas shall be resurveyed. If active bird nests are identified, vegetation removal in these areas shall be postponed until after the nesting season, or a qualified biologist has determined the young have fledged and are independent of the nest site. No known active nests shall be disturbed without a permit or other authorization from the USFWS.

The following mitigation applies to Alternatives A and D:

C. Ponds and jurisdictional wetlands will be avoided where feasible; this avoidance will be integrated into project design.

D. Encroachments or alterations to jurisdictional wetlands (i.e. Kilbourn Road Ditch), including those planned by the Wisconsin Department of Transportation (WisDOT) will be reviewed by the U.S. Army Corps of Engineers pursuant to the Section 404 of the Clean Water Act. Replacement or enhancement of may be required as a condition of the Section 404 permit for extension of the culvert.

The following additional measure is required only for Alternative C:

E. The Tribe will comply with mitigation requirements and provisions of the Karner Blue Butterfly Habitat Conservation Plan (HCP). The Tribe would apply as a one-time sub-permittee. The non-partner status requires compensatory mitigation to be paid by the Tribe in an amount to be determined by the HCP Coordinator.

5.2.6 CULTURAL RESOURCES

As noted in **Section 4.6**, the Menominee Tribe has agreed to the preservation-in-place of archaeological site 47 Kn 394. Therefore, the site plan for Alternative A has been designed to incorporate the limits of 47 Kn 394 within designated green space and no earth-disturbing activities will occur at the site location.

The following measures are recommended for Alternatives A, B, and D.

A. In the event of a potentially significant discovery, procedures for post review discoveries without prior planning under 36 CFR 800.13(b) of the National Historic Preservation Act (NHPA) shall be followed. If the discovery is deemed to be significant by a professional archaeologist, as defined in the Secretary of the Interior's Professional Standards (NPS 1983), then this recommendation shall be made to the Bureau of Indian Affairs (BIA) archaeologist. If the BIA archaeologist agrees with the recommendation, then a finding of significance shall be forwarded to the Wisconsin State Historic Preservation Officer (SHPO) for concurrence. For significant archaeological resources, a Historic Properties Treatment Plan (HPTP) shall be developed to mitigate impacts before additional land disturbing activities in the area of discovery shall be allowed to resume.

   Additionally, all such finds shall be subject to the provisions of the Native American Graves Protection and Repatriation Act (25 USC 3001 et seq.) and the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470 aa-mm).

The following measures are recommended for Alternative C.

B. As noted in **Section 4.6**, the Menominee Tribe has committed to preservation-in-place of the two sites identified in 1993 (47 Me 94 and 47 Me 95). Additionally, if future

development poses a threat to these two sites, then more detailed studies in accordance with Section 106 of the NHPA will be conducted to determine their eligibility for the National Register and to identify appropriate long-term management recommendations.

5.2.7 SOCIOECONOMIC CONDITIONS

Under the Tribal-State Compact and the IGA, funding will be provided to address gambling addiction as discussed under Alternative A. Under Alternative B, the Tribe would enter into an agreement consistent with the lesser socioeconomic impacts resulting from a reduced intensity gaming facility. No additional mitigation is recommended.

5.2.8 RESOURCE USE PATTERNS

TRANSPORTATION

The following mitigation measures are recommended for Alternatives A and D. The Tribe would implement traffic improvements necessitated by trips generated by the casino-hotel via the Sales Tax Agreement described previously.

Intersection Mitigation Measures

A. **52nd Street/Western Frontage Road-**
- The east-west movements on 52nd Street should operate freely.
- The northbound direction should operate under stop control.
- The frontage road should provide a combination through/right-turn lane in the northbound direction.
- The frontage road should provide a combination through/left-turn lane in the southbound direction.
- 52nd Street should provide a combination left-turn/right-turn lane in the westbound direction.

B. **52nd Street/Access Drive-**
- The eastbound direction should be reconfigured to provide two through lanes and a free flow right turn lane.
- The northbound direction should provide dual left-turn lanes and a right turn lane.
- A left-turn lane should be added to the westbound direction.

C. **104th Avenue-**
- This road should be widened to provide two northbound through lanes in the area bounded by the development's southern access drive on the south and 52nd Street to the north.
- A center left-turn lane should also be provided.

D. **52nd Street /104th Avenue-**

If roundabout installed:

- The eastbound, westbound, and northbound directions should provide two entry lanes into the roundabout.
- The southbound direction should provide one entry lane into the roundabout.

If the intersection remains signalized:

- A left-turn lane, combination left-turn/through lane and a free-flow right-turn lane should be provided in the northbound direction.
- A left-turn lane and combination through/right-turn lane should be provided in the southbound direction.
- In the westbound direction, an additional left-turn lane should be provided to create dual left-turn lanes.

E. **104th Avenue/Northern Access Drive-**

- A northbound left-turn lane should be provided.

F. **104th Avenue/Central Access Drive-**

- A northbound left-turn lane and a southbound right-turn lane should be provided.
- Provide one inbound lane and two outbound lanes, a left-turn lane and a right-turn lane.

G. **104th Avenue/Southern Access Drive-**

- This intersection should be signalized.
- Provide dual left-turn lanes and a right-turn lane.
- A northbound left-turn lane and a southbound right-turn lane should be provided.

H. **104th Avenue/60th Street-**

- This intersection should be signalized.
- The eastbound direction should provide a left-turn lane and a combination through/right-turn lane.
- The westbound direction should provide a left-turn lane, a through lane, and a right-turn lane.
- Both the northbound and southbound directions should provide a left-turn lane and a combination through/right-turn lane.

I. **52nd Street /120th Avenue-**

- The eastbound direction should provide a left-turn lane, two through lanes and a combination through-right-turn lane.

- The westbound direction should provide a left-turn lane, two through lanes and a right-turn lane.
- The frontage road should provide a left-turn lane and a combination through/right-turn lane in both the northbound and southbound directions.
- The movements from the eastern frontage road should operate under stop control.

J. **52nd Street /I-94 Northbound Ramp-**

- This intersection should be signalized.
- The eastbound direction should provide a left-turn lane and two through lanes along 52nd Street.
- The westbound direction should provide two through lanes and a right-turn lane.
- A combination left-turn/through lane and a free-flow right-turn lane should be provided at the I-94 northbound ramp.

K. **52nd Street /I-94 Southbound Ramp-**

- If roundabout installed :
- The eastbound, westbound, and southbound directions should provide two entry lanes into the roundabout.
- The northbound direction should provide one entry lane into the roundabout.

If intersection signalized:

- Two through lanes and a right-turn lane should be provided in the eastbound direction (along 52nd Street).
- A left-turn lane and two through lanes should be provided in the westbound direction (along 52nd Street).
- A left-turn lane and combination left-turn/through/right-turn lane should be provided a the I-94 southbound ramp.

The above mitigation measures reduce the LOS to acceptable levels at all of the study intersections except for the following intersections.

- 52nd Street/120th Avenue- North Bound Left – F South Bound Left – F in AM and PM
- 52nd Street/NB I-94 Ramp- North Bound Left Through – E in AM and North Bound Left Through – F in PM

These two intersections are unsignalized and do not meet traffic signal warrants. If a traffic signal were installed, the LOS on the mainline road (52nd Street) would decline, but the LOS would not deteriorate to unacceptable levels. WisDOT states that when an unsignalized intersection has an unacceptable LOS, installation of a traffic signal is not necessarily proposed. The 52nd Street/120th Avenue intersection would show an unacceptable LOS both with and

without the addition of Alternative A project traffic. Cumulative conditions are estimated over a ten-year period from construction; therefore, conditions are projected based on data available. Cumulative conditions for the Alternative A plus mitigation scenario are estimated from best available data. Impacts at these two intersections would be significant and unavoidable.

Construction Mitigation Measures

L. Where feasible, lane closures or obstructions associated with the construction of the project shall be limited to off-peak hours to mitigate for traffic congestion and delays. A traffic management plan shall be prepared to identify which lanes require closure, where night construction is proposed, and other standards set forth in the *Manual on Uniform Traffic Control Devices for Streets and Highways* (USDOT FHWA, 2003). The traffic management plan shall be submitted to each affected local jurisdiction and/or agency.

M. Prior to the finalization of construction plans, the Tribe shall work to notify all potentially affected parties in the immediate vicinity of the project site. Notification shall include a construction schedule, exact location of construction activities, duration of construction period, and alternative access provisions.

N. Also prior to the finalization of construction plans, the Tribe shall work with emergency service providers to avoid restricting emergency response service. Police, fire, ambulance, and other emergency response providers shall be notified in advance of the construction schedule, exact location of construction activities, duration of construction period, and any access restrictions that could impact emergency response services. Traffic management plans shall include details regarding emergency service coordination. Copies of the traffic management plans shall be provided to all affected emergency service providers.

O. Emergency services would be notified as to the areas that have greatest potential for unusual traffic delay as a result of project construction activities. Detour roads would be suggested to the emergency services as avoidance paths for areas of traffic delay.

Other Mitigation Measures

In **Section 4.13**, cumulative impacts were identified as a result of increased traffic directed from the egress point onto 104th Avenue and from 60th Street, if used. The mitigation measures identified below shall be implemented by the Tribe and would reduce the impacts identified in **Section 4.13** to a less-than-significant level.

P. The main entryway to proposed facilities will be via 52nd Street.

Q. For patrons leaving the parking structure, approximately 30 percent will be diverted to the 52nd Street access road and the remaining patrons (approximately 70 percent) will be diverted to the 104th Street access road.

R. Traffic exiting onto 104th Street will be restricted to a left turn, directing vehicles northbound to the intersection with 52nd Street.

S. Access to the property via 60th Street access will be for emergency vehicles only.

T. Access to the property at 104th Avenue will be for employees only.

LAND USE

The following mitigation is recommended for Alternative A:

U. Tribal Ordinance 04-44 (Exhibit C if the IGA) governs land use for the project site, and is substantially similar to the existing land use ordinances for the City of Kenosha. This Ordinance was adopted and approved by the Tribe, City and County of Kenosha concurrently with the IGA. The Tribe will seek and obtain the written approval of all parties to the IGA prior to implementing any land uses on the project site not consistent with the IGA.

V. The Tribe will cooperate with the City of Kenosha's mid-term goals regarding public access along Kilbourn Road Ditch. The Tribe will allow the planned access way parallel to the eastern bank of the Kilbourn Road Ditch to traverse the project site. Siting of this access way will avoid encroachment upon the floodplain and cultural resources deposits and minimize disturbance to biological resources.

The following mitigation is recommended for Alternatives A, B and D:

W. The Tribe will control hazardous wildlife in a manner consistent with FAA Advisory Circular 150/5200-33 by means of steep-sided or narrow, linear, rip-rap lined detention basins rather than retention basins. Vegetation on the main pond should be cleared on its eastern portion, where it lies within the Air-3 Approach Zone. Landscape design should not introduce vegetation that provides food or cover for hazardous wildlife within flight paths. Landscaped areas should be monitored on a continuous basis for the presence of hazardous wildlife within 10,000 feet of the airport's aircraft movement area.

5.2.9 PUBLIC SERVICES

CONSTRUCTION RELATED SOLID WASTE

The following mitigation is recommended for Alternatives A, B, C and D:

A. Construction waste will be recycled to the fullest extent practicable by diverting green waste and recyclable building materials from the solid waste stream.

B. Acquiring environmentally preferable materials to the extent practical for construction of facilities.

SOLID WASTE FROM FACILITY OPERATIONS

The following mitigation is recommended for Alternatives A, B, C and D:

C. The Tribe will adopt a solid waste management plan that addresses recycling and solid waste reduction onsite. Measures adopted under this plan will be applied to the design of the hotel, casino, event center, retail outlet center, and associated facilities. These measures will include, but not be limited to, the installation of a streamline trash compactor for cardboard and paper products and annual waste stream analysis.

D. Installation of recycling bins throughout the facilities for glass, cans and paper products.

E. Decorative trash and recycling receptacles will be placed strategically throughout the project to encourage people not to litter at the project site.

F. Roving security guards will be trained to discourage littering on-site.

ELECTRICITY, NATURAL GAS, AND TELECOMMUNICATIONS

The following mitigation measures are recommended for Alternatives A, C, and D:

G. At least three working days prior to construction, the Tribe will contact the Digger's Hotline which provides a free "Dig Alert" service to all excavators (i.e., contractors, homeowners, and others) in Wisconsin. This call will automatically notify all utility service providers at the excavator's work site. In response, the utility service providers will mark or stake the horizontal path of underground facilities, provide information about the facilities, and/or give clearance to dig. The utility companies will be responsible for the timely removal or protection of any existing utility facilities located within construction areas on the property.

Energy Conservation

The following mitigation applies to Alternatives A, B, C and D:

H. Buildings will be thoroughly insulated and weatherized so as to minimize energy loss due to heating and cooling waste. Doors and windows will be regularly inspected for air leaks, and will be caulked or weatherstripped as appropriate where leaks are identified. Storm windows and double paned glass will be used to the extent practicable, and will be maintained in good repair and weatherized. New windows will meet energy saving criteria set forth by the National Fenestration Rating Council (NFRC). Caulk and seal will be used as appropriate to prevent air leaks where plumbing, ducting, or electrical wiring penetrates through exterior walls, floors, ceilings, and soffits over cabinets. Rubber gaskets will be installed as appropriate behind outlet and switch plates on exterior walls. Exterior walls will be sealed with appropriate sealants.

I. For heating systems, filters on furnaces will be cleaned or changed once a month or as needed. Energy-efficient equipment, such as appliances bearing the ENERGY STAR logo, will be selected for purchase and installation.

J. The HVAC system will minimize the use of energy by means of using high efficiency variable speed chillers, high efficiency low emission steam and/or hot water boilers, variable speed hot water and chilled water pumps, variable air volume air handling units, and air-to-air heat recovery where appropriate. Hotel rooms will have four pipe fan coil units and individual exhaust vents. Pool area dehumidification will include heat recovery systems. All systems will be designed in accordance with ASHRAE Standard 90. Complex ventilation will be designed in accordance with ASHRAE Standard 62. A building automation system will be integrated with all building support systems.

K. Energy efficient lighting will be installed throughout buildings. The 2002 State of Wisconsin enrolled commercial building code, chapter 63, will be followed that required lighting be automatically shut off in rooms that are not used 24 hours a day via timer or occupancy sensors. Building and site lighting watts per square foot used will be less than allowed by code. Dual level light switching will be done in support areas to allow users of building to reduce lighting energy usage when the task being preformed does not require all lighting to be on. Day lighting controls will be installed for lighting near windows to reduce artificial lighting level when natural lighting is available. Controls will be installed for exterior lighting so it is turned off during the day.

Water Heating and Conservation

L. Water systems will be inspected regularly for leaks or degradation that could lead to leaks, and water heater tanks and pipes will be insulated or lagged to the extent practicable.

M. Nonaerating, low-flow faucets and showerheads will be installed in the hotel rooms.

N. New, energy-efficient water heaters will be installed, and will be evaluated for replacement every 7 years.

O. Water tanks will be maintained and cleaned every 3 months to remove sediment in order to maintain the heat transfer efficiency of water heaters.

PUBLIC HEALTH AND SAFETY

Law Enforcement

The following mitigation measures are recommended for Alternatives A, B, and C:

P. The Tribe will provide on-site security for casino operations to reduce and prevent criminal and civil incidents.

Q. The Tribe will adopt a Responsible Alcoholic Beverage Policy which would include but not be limited to carding patrons and refusing service to those who have had enough to drink. This policy would be discussed with the City of Kenosha Police Department.

R. The Tribe will provide traffic control with appropriate signage and the presence of peak-hour traffic control staff. This will aid in the prevention of off-site parking, which could create possible security issues.

S. Areas surrounding the gaming facilities will have "No Loitering" signs in place, will be well lit and will be patrolled regularly by roving security guards. This will aid in the prevention of illegal loitering and all crimes that relate to, or require illegal loitering.

T. The Tribe will provide traffic control with appropriate signage and the presence of peak-hour traffic control staff. This will aid in the prevention of off-site parking, which could create possible security issues.

The following measures are recommended for Alternative A, as specified in the IGA between the Tribe and the City of Kenosha:

U. In exchange for law enforcement services the Tribe shall make annual payments to the City of Kenosha in the sum of 3% of Net Win for the first 8 years and 4 % of net win thereafter. Minimum amounts are discussed in the IGA

V. The Tribe will create and implement a detailed, responsible gaming policy including but not limited to the prohibition of underage gambling, identification of gambling customers, and display and advertisement of legal age to gamble.

The following mitigation measures are recommended for Alternatives B, C, and D:

W. The Tribe would negotiate with the appropriate police department to provide law enforcement services to compensate the department for additional demands caused by the operation of the facilities.

Fire Protection / Emergency Medical Service

The following mitigation measures are recommended for Alternatives A, B, C and D:

X. Any construction equipment that normally includes a spark arrester will be equipped with an arrester in good working order. This includes, but is not limited to: vehicles, heavy equipment, and chainsaws. During construction, staging areas, wilding areas, or areas slated for development using spark-producing equipment will be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor will keep these areas clear of combustible materials in order to maintain a firebreak.

Y. The Tribal Government will make reasonable provisions for adequate emergency, fire, medical, and related relief and disaster services for patrons and employees.

Z. The Tribe shall use fire resistant construction materials for the larger buildings and equip all enclosed buildings with automatic sprinkler systems. The automatic sprinkler systems shall be designed to meet or exceed the NFPA standards governing the different occupancies associated with the project structures.

AA. Through the use of modern construction and fire engineering techniques, the Tribe shall build-in automatic systems designed to contain any fire to the room of origin.

BB. Through the use of modern fire engineering technology the Tribe shall create and maintain a facility equipped with the latest early detection systems that insure an initial response to any fire alarm (automatic, local, or report). This would rely on automatic sprinkler systems in the occupied areas and smoke

detection, along with automatic sprinkler systems, in the areas of the facility that are normally unoccupied, such as storerooms and mechanical areas.

The following measures are required for Alternative A, as specified in the IGA between the Tribe and the City of Kenosha:

CC. In exchange for fire protection services the Tribe shall make annual payments to the City of Kenosha in the sum of 3% of Net Win for the first 8 years and 4 % of net win thereafter. Minimum amounts are discussed in the IGA

The following mitigation measures are recommended for Alternatives B, C, and D:

DD. The Tribe would negotiate with the appropriate fire department to provide services to compensate the department for additional demands caused by the operation of the facilities.

5.2.10 OTHER VALUES

HAZARDOUS MATERIALS

The following measures are recommended for Alternatives A, B, C and D:

A. In the event that contaminated soil and/or groundwater are encountered during construction related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or a qualified individual can assess the extent of contamination. If contamination is determined to be significant representatives of the Tribe shall consult with State and/or local agencies to determine the appropriate course of action, including the development of a Sampling Plan and Remediation Plan if necessary.

B. In the event that suspected hazardous materials are encountered during construction-related earth-moving activities, all work shall be halted until a professional hazardous materials specialist or an equivalent qualified individual can identify the material. If the material is determined to be hazardous a representative from the Tribe shall meet with local agencies if necessary to determine the appropriate course of action, including the appropriate disposal of the material according to State and Federal regulations.

C. To reduce the potential for accidental releases, fuel, oil, and hydraulic fluids would be transferred directly from a service truck to construction equipment tanks and would not otherwise be stored onsite. Paint, thinner, solvents, cleaners, sealants, and lubricants used during construction would be stored in a locked utility building, handled per the manufacturers' directions, and replenished as needed.

D. Personnel will follow written standard operating procedures (SOP's) for filling and servicing construction equipment and vehicles. The SOP's, which are designed to reduce the potential for incidents involving hazardous materials, will include the following:

- Refueling would be conducted only with approved pumps, hoses, and nozzles.
- Catch-pans would be placed under equipment to catch potential spills during servicing.
- All disconnected hoses would be placed in containers to collect residual fuel from the hose.
- Vehicle engines would be shut down during refueling.
- No smoking, open flames, or welding would be allowed in refueling or service areas.
- Refueling would be performed away from bodies of water to prevent contamination of water in the event of a leak or spill.
- Service trucks would be provided with fire extinguishers and spill containment equipment, such as absorbents.
- Should a spill contaminate soil, the soil would be put into containers and disposed of in accordance with local, state, and Federal regulations.
- All containers used to store hazardous materials would be inspected at least once per week for signs of leaking or failure. All maintenance and refueling areas would be inspected monthly. Results of inspections would be recorded in a logbook that would be maintained onsite.
- Staging areas, welding areas, or areas slated for development using spark-producing equipment would be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor will keep these areas clear of combustible materials in order to maintain a firebreak.
- Any construction equipment that normally includes a spark arrester will be equipped with an arrestor in good working order.

Implementation of these measures would reduce hazardous materials effects to a less than significant level.

NOISE

The following measures are required for Alternatives A, B, C and D:

E. Noise from HVAC fans, and other mechanical equipment will be mitigated to insignificant levels by requiring that all such equipment installations be designed to ensure compliance with hourly average or median noise standards.

F. Noise due to idling tour buses will be mitigated to an insignificant level by requiring that buses be parked as far as practical from the nearest residences, and by prohibiting excessive idling.

G. Potential noise impacts from loading dock operations will be mitigated by requiring that loading dock use be limited to daytime hours (7 AM to 7 AM).

H. All powered equipment will comply with applicable local, State, and Federal regulations, and all such equipment shall be fitted with adequate mufflers according to the manufacturer's specifications to minimize construction noise effects.

The following additional measure is recommended for Alternatives A and D:

I. An earth berm shall be constructed along the eastern end of the south boundary of the project site to block noise. The berm shall be 8 to 12 feet high and shall be landscaped.

Implementation of these measures would reduce noise effects to a less than significant level.

VISUAL RESOURCES

The following measures are recommended for Alternatives A and D, and include mitigation for light and glare Impacts:

J. No structure on the project site will be higher than 75 feet above ground surface, per ordinances adopted by the Tribe.

K. In addition to earthen berm discussed above for noise mitigation, trees will be installed where feasible to reduce lighting and glare, as well as to enhance overall appearance.

L. Landscaping, to include berms and trees, will be established at the southeast corner of the project site, to provide visual buffering between the RV Park and the surrounding viewshed.

M. Lighting for exterior illumination will be downcast, so as to avoid glare overflowing off-site.

N. Illuminated signage will be limited to the northern side of the project site.